



**REGULAR MEETING**  
**PUBLIC EMPLOYEES' RETIREMENT BOARD**

**AUGUST 26, 2004**

The regular meeting was called to order by President Teichrow at 8:30 a.m. Thursday, August 26, 2004. Roll call was taken with all members of the Board being present. Board members and staff present were:

Terry Teichrow, President  
Carole Carey, Vice President  
Robert Griffith, Member  
Betty Lou Kasten, Member  
Jay Klawon, Member  
Troy McGee, Member  
Jim Pierce, Member  
Kelly Jenkins, Counsel  
Melanie Symons, Counsel  
Mike O'Connor, Executive Director  
Linda Owen, Secretary

**OPEN MEETING**

Tim Jones, Sue Winchester, and Nancy Quirino, Great-West Retirement Services; Jim Kembel, TIAA-CREF; Mike Anderson, Rick Ryan, Kurt Bushnell, Scott Moore, Dan Cotrell, Matt Norby, Chad Nicholson, Jack Trethewey, and Ed Regele, members of the Montana State Firemen's Association; and Ian Steel, Disability Claims Examiner; Kim Flatow, Member Services Bureau Chief; Roxanne Minnehan, Fiscal Services Bureau Chief; Kathy Samson, Defined Contributions Bureau Chief; Carolyn Miller, Administrative Officer; and Rob Virts, Training and Development Specialist; MPERA, joined the meeting.

**MINUTES OF OPEN MEETING**

The Executive Director presented the minutes of the open meeting of July 22, 2004. Mr. Klawon moved that the minutes of the previous open meeting be approved. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

**EXECUTIVE DIRECTOR'S REPORT - Mike O'Connor**

**EIAC Bylaws Review** – The structure of the bylaws was developed to have 25% of the EIAC members have their term of office expire each year. President Teichrow felt two of the seven representatives being active participants in the Defined Contribution Retirement Plan (DCRP) or the State Deferred Compensation Plan (457 Plan) was a low number of representatives of the DCRP and 457 Plan and suggested it be increased to four of the seven representatives. When these Council members are advising people on these plans, their participation in these plans would be logical and beneficial in their understanding of the plans.

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President Teichrow made a motion to change the number in Article III of the EIAC Bylaws, of active participants in the Defined Contribution Retirement Plan or the State Deferred Compensation Plan, to five. Mrs. Carey seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

**Quarterly Budget Report** – Roxanne Minnehan provided a graph charting the budget versus expenses from FY 2002 to FY 2005. She presented the fourth quarter budget status report for FY 2004.

**Stable Value – Deferred Compensation Plan** – The Board has reviewed the structure of the Stable Value option provided in both the Deferred Compensation Plan (457 Plan) and the Defined Contribution Retirement Plan (DCRP). A 457 Plan participant requested that the Board review the stable value product to determine if there is a way to prudently enhance the return to participants while exercising their fiduciary responsibilities.

The Board contracted with Arnerich, Massena & Associates to provide an analysis and the necessary information to prudently make an informed decision. Their review was presented to the Board at the July 2004 meeting.

Mr. O'Connor stated the wrap provider is the overseer of what the money manager does. The wrap provider will not allow duration over 5.5 years. Arnerich's recommendation is to keep the duration at the near-market duration that it is currently.

The Board's recordkeeping contract will come due in June 2007. If the Board wants to consider a different structure, Mr. O'Connor's recommendation is that, prior to the recordkeeping contract being awarded, the Board determines the structure they want for the Stable Value, both for the DCRP and the 457 Plan, so recordkeeping vendors will know the issues when they respond to an RFP.

Mr. Klawon is not willing to allow a wrap provider to dictate what they will or will not do for the Board. He felt an RFP could find a wrap provider willing to make it the way it was, with a longer duration. Because the BOI is in the process of finding an outside consultant, it is unsure what will develop, and for that reason, Mr. Klawon would hold off on a decision. He is not in agreement with Arnerich and Massena's reasons for being cautious at this point.

Board consensus was to leave things as they are.

**Board Policy Update** – Carolyn Miller presented the Delinquent Payments and Interest Penalty Policy. The goal of the policy is to encourage prompt payment of contributions by employers and to maintain the integrity of the assets and income of the pension trust funds. To attain that goal, the PER Board, acting as fiduciaries of the retirement systems, will maintain the actuarial soundness of the systems by collecting delinquent contribution payments and interest penalties.

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Ms. Miller explained that if an agency does not timely submit their payroll report and necessary contributions, the MPERA would notify the employer of the delinquency. The employer will be required to provide a written explanation for the delay. The information will be reviewed to determine the interest penalty assessment. An interest penalty must be assessed unless it is determined the cost of assessment and collection is greater than the appropriate penalty.

If an employer has inadvertently not submitted the required reports and necessary contributions for an employee, the MPEA will require the employer to make payment in full or initiate an agreed payment schedule for the amount due. When an error is discovered, the Board would assess the employer at the interest rate of 8% compounded annually on the unpaid balance of delinquent payments. This interest assessment maintains the actuarial soundness of the retirement system. If the employer does not make payment in full or initiate an agreed payment schedule, the balance due will be recalculated with an interest penalty on the unpaid balance at 9% compounded annually, or \$10.00 a day, whichever is greater.

This policy is exercising the Board's discretion to waive the 9% interest penalty, or the \$10 a day, whichever is greater, and reduce it to 8%.

Mr. McGee would like to see something in the policy that would give the Board more flexibility. Also, under Section III. B.—“Procedures for Determining Interest Rates,” 1. “Pursuant to 19-2-506, MCA, interest on delinquent payment *will* be assessed...”, Mr. McGee would like the word “will” changed to “may.” Ms. Symons explained that it is the same as our existing policy because these are the immediate errors, where they are not giving us their reports. It is important to get those reports timely, as opposed to the reporting errors that are advertent mistakes where we start out with 8%. When employers are not getting their reports in timely, it was decided to require the full 9% or \$10 a day, whichever is greater, in an effort to get these entities to report to us timely. Mr. McGee reiterated that, as a Board member, he does not want the word “will” in that line; he prefers “may.” He felt the Board has situations where it is difficult to find who is at fault. He feels the Board should have some flexibility in this area. The 8% is a penalty, not interest. Mr. Klawon added that of the 9% penalty, 1% is the penalty and 8% is to stay actuarially sound.

Having a policy in place makes the Board's job easier. If the interest penalty is always waived, it would hurt the actuarial soundness of the system. Mrs. Kasten would like the policy to stay as it is, with the word “may.” Otherwise, anyone who falls under this policy will want to request that the Board waive the 1% penalty.

Mr. McGee would like the Board to be fair, and he finds this issue very frustrating. 19-2-506(2), MCA states: “The Board may, at its discretion, waive the penalty.” Mrs. Kasten pointed out it also says “an interest penalty must be assessed...” President Teichrow added that statute says to charge 9% penalty, or \$10 a day, or waive the penalty. Mr. O'Connor clarified the issue by pointing out that the Board may waive the 9% or \$10 a day penalty, at its discretion, and the Board's policy says it can be waived down to 8%, which is the amount needed for the system to remain actuarially sound (19-2-409, MCA).

Mr. McGee suggested deferring a decision at this time; however, the Board was split. With strict guidance, determinations are easier on the Board. Mr. McGee did not like the fact that people come before the Board, thinking the Board will do something and the Board never does. Mrs. Kasten questioned having a policy that does not explicitly say what the Board means.

Mr. Pierce made a motion that the Board adopts the Delinquent Payments and Interest Penalty with the changes proposed by staff. Mr. Klawon seconded the motion, which upon being submitted to vote, was duly carried with four of the attending members voting aye, and Mr. McGee, Mr. Griffith and Mrs. Carey voting nay.

**Powder River County and School District – Reporting Error** – Starting in September 1997, Gina Talbot worked part-time for Powder River County and for Powder River County High School, both PERS-covered employers. In March 1998, Ms. Talbot's combined hours with the two employers exceeded 960. At that time, PERS membership became mandatory. Neither employer reported Ms. Talbot to MPERA, although, at the time, our rules did require that **all** employees be reported.

In October 1999, Ms. Talbot filed an Optional Membership form to join PERS as an optional (less than 960 hours) member. At that time, Ms. Talbot's employers were obligated to pay PERS contributions regardless of the number of hours worked. No contributions were withheld. In March 2003, Ms. Talbot quit working for Powder River High School and started working full-time for Powder River County. At that point, contributions were started. MPERA staff did not become aware of the delinquent contributions until Ms. Talbot requested to purchase previously refunded service. Once 960 hours were surpassed in 1997, contributions should have been paid.

MPERA staff then sent mandatory collection of delinquent contributions and interest penalty notices to both employers. Both employers have appealed payment of the delinquent contributions and the interest assessed thereon. The employers claim lack of notice, alleging that either Ms. Talbot or MPERA, or both, had the obligation to notify the employers of Ms. Talbot's dual employment. Since they had no notice, the employers argue they have no liability to pay the contributions or the interest.

Ms. Symons stated that, clearly, the employer would know when the Optional Membership form was filed. It is the employer's obligation to know which employees are members of PERS, not MPERA's. Mr. McGee did not agree that MPERA has no responsibility, generally speaking. Ms. Symons pointed out that MPERA staff cannot know an employee exists if an employer does not report them. Staff determined that both Powder River County and Powder River High School are required by law to pay delinquent employer and employee contributions and an 8% interest penalty to PERS on behalf of Gina Talbot.

Mr. Klawon made a motion that the Board uphold the staff determination that both Powder River County and Powder River County High School owe delinquent contributions and interest penalties to PERS on behalf of Gina Talbot. Powder River County's total amount owed as of June 2, 2004, is \$4,677.76. Powder River County High School's total amount owed as of June 2, 2004, is \$4,817.25. Mr. Pierce seconded the motion, which upon being submitted to vote, was duly carried with five of the attending members voting aye, and Mr. McGee and Mr. Griffith voting nay.

**Town of Philipsburg – Interest Penalty** – Samuel Brown was an employee of the Department of Corrections and a member of the Public Employees' Retirement System (PERS). He terminated his position with the Department of Corrections on December 30, 1994. He received a refund of his contributions by informing MPERA that he was not returning to a PERS-covered position for 30 days, when in fact, he became an elected official with Granite County and the Town of Philipsburg in January 1995. Mr. Brown was an active PERS member at that time and his PERS membership should have continued. He did not have the option to not elect PERS because he was a member through his employment with the Department of Corrections.

Staff determined that the membership of Mr. Brown was terminated in 1995 in error. Mr. Brown did not contribute to PERS through his employment with the Town of Philipsburg. Once this determination was made, a mandatory bill was sent to recoup the amount of contributions owed, plus an 8% interest penalty. The Board policy setting 8% as the minimum interest to be charged on reporting errors became effective in July 1998. The Town of Philipsburg is requesting to have all interest charges waived.

Mr. Klawon made a motion to uphold the previous Board decision, denying the request of the Town of Philipsburg to waive all interest charges in the matter of Samuel Brown. Mr. Pierce seconded the motion, which upon being submitted to vote, was duly carried with six of the attending members voting aye, and Mr. McGee voting nay.

**Legal Service Contract – Ice Miller** – Mr. O'Connor advised the Board there are legal issues that need to be clarified by Ice Miller, to make sure the Board stays in compliance with the qualification issues. Also, employers are looking at adding the health insurance premiums to their total compensation and then paying it back as the premiums increase in their compensation, so that they will increase their retirement benefits. There may be issues with whether or not that can be included as compensation.

Mr. Griffith made a motion to approve the contract and budget for legal services with Ice Miller. Mr. McGee seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

**Asset Allocation Funds – Deferred Compensation Plan** – Kathy Samson addressed discussions with Great-West. The preface of the entire presentation and narrative is the April 22, 2004 Board decision. The Board decided to discontinue the five current Great-West profile funds available and work with Great-West to create three asset allocation funds using the core options/investment options already available in the 457 Plan. The Board, at their February meeting, made a motion to have staff work with Great-West to establish a process to replace the five existing profile funds with three funds created from the funds in the 457 Deferred Compensation investment portfolio.

Perry Christie, with Great-West Retirement Services (GWRS), joined the Board's discussion via conference call. Based on the Board's previous decisions, staff had a conference call with GWRS on May 4, 2004, to ask them about their ability to offer or build custom funds using underlying core funds available in the plan.

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During the conference call, Mr. Christie clarified that GWRS can recordkeep such funds at no additional cost, but the GWRS charge for creating custom funds is \$42,000. Mr. Christie added that, although there is not a management fee in creating a custom fund, they blend all of the returns of the various mutual funds on a daily basis. With the creation of any fund, there are the underlying reconciliations and risks. There is greater risk when creating a custom fund. The cost covers the reconciliations, daily striking of the unit value, and the risk premium.

Scott Faris, with Arnerich & Massena, had suggested as a solution the ability to have a portfolio available on the recordkeeping system only, but that participants see all of the underlying funds. And rather than selecting a fund, they would be selecting a strategy. Within that strategy, they still see the underlying funds they are using. The participants would select each of those funds in their strategy and select the appropriate percentages to meet that strategy. Then they would need to set the available rebalancer and the timing they wanted.

The problem with a rebalancer tool is that participants would actually have to go on the system and specify the investment options they want chosen. A custom profile has automatic rebalancing. The rebalancer is not automatic with the fronts, but they will be. When the fronts are built, the rebalancer becomes part of that front. The Board would determine what timing that rebalancer would be. The front is different than the rebalancer, at this point. The desire would be to tie the two together.

In subsequent discussions, GWRS has said they could put a front on their system so when a participant chose a particular strategy, the allocations would automatically go to whatever funds were in that strategy rather than choosing individual funds. They felt there was value in doing that, but they cannot get to it before the end of the year because of other programming projects. This will be another communication/education tool offered to 457 Plan participants to become more involved in their investing.

Mr. Christie stated that GWRS is trying to be supportive of whatever the Board would like. They have the ability to go forth with whatever avenue the Board decides.

The Board, at this time, has two options: 1) Participants are provided the strategies and must select each one of the funds in the strategy, or 2) a system "front" would be built for each of the asset allocation strategies. The "front" would automatically allocate contributions to the underlying funds by the determined percentages for selected strategies, and it would also automatically set the rebalancer.

For either of these options, the strategy only works if the participant stays within that strategy and does not use other funds. Once they move outside of that strategy or add another fund, they have lost the strategy. Ms. Samson felt this was an important concept to convey to participants if they are selecting a strategy. The Board wants asset allocation funds to provide to participants.

President Teichrow addressed reasons for having a profile fund or a strategy fund:

1. It makes it easier for a person to decide what to do.
2. It automatically creates diversity for those who do not want to select funds themselves, or do not know how to do it.
3. It also creates a strategy that fits the participant's situation.

Is it the Board's role to educate participants by presenting strategies in a more clear, distinguishable light by seeing their funds listed out on their statement? Whereas, in a current profile, they would just see the name of the profile, i.e. moderately aggressive, etc., but would not see the underlying funds. We are here to provide services to participants so they can understand what they are doing with their investing.

Mr. Christie stated it would be difficult to build everything that every participant would want to use. Up to this point, they have allowed participants the complete flexibility to do what they want and not force them to do any one thing. However, research shows that the majority of participants are not using the available tools. We need a program that will be managed for them. Mr. Jones stated the value to the Board, of strategy versus custom profile, is lower cost.

Ms. Samson noted that the Board has unlimited options available to them. If the Board believes that this "front" that GWRS can build for them, is the way the Board wants to go, then the Board can maintain profile funds until such time that the "fronts" are built.

President Teichrow suggested the Board temporarily reinstate the five profile funds, with the purpose of finding out about the fronts, rebalancer, and obtain more information from Mr. Christie to help make decisions in the future. GWRS will not be addressing new system alternatives until after the first of the year. Completion in a year would be a relatively reasonable timeframe. Mr. Jenkins asked Mr. Christie if GWRS would hold the Board harmless to reinstate the profile funds? Mr. Christie was not sure because he felt the funds could be evaluated, and that the Board should be the ones to evaluate them. He did not feel the Board should use a fund they cannot evaluate. He was suggesting there were ways to evaluate the funds that would fit within the Board's guidelines.

Mr. Christie stated every profile fund could have underlying funds that one agrees or disagrees with. The Board needs to evaluate investments as a whole, and have a custom benchmark that actually reflects the nature of a fund. Having an inappropriate benchmark should not be the reason the Board is changing their decisions. Mr. Jenkins pointed out there are no guidelines in place that tell the Board when a profile fund is good. He asked Mr. Christie if he was suggesting, until the Board develops a methodology for evaluation, which would include development of a benchmark, the Board should not reinstate the profile funds. Mr. Christie felt the Board does not have a good direction they want to take and he would not recommend the Board pull those funds until they come up with a concrete answer of what they are trying to do. He definitely suggested the Board keep them in, or go to a custom profile until the issues have been resolved.

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The Board discussed temporarily reinstating the five profile funds for current participants in the profile funds only, but not have them actively available for new participants. Ms. Samson stated that active participants of the 457 Plan can no longer choose those profile funds, even though they will be reinstated, because they have been closed as of July 14, 2004. No special considerations can be made.

Mr. McGee wants to be sure it is clear that the Board expects GWRS to proceed with developing a “front” and creating a mechanism to coordinate that with a rebalancer option. Mr. Christie stated the intent is to begin the first of the year, and he would handle the asset allocation strategy. Ms. Samson stated she feels absolutely comfortable moving forward with this concept.

President Teichrow questioned if the Board either accepts the responsibility of what they’ve done for two years. Mrs. Kasten felt that understanding the legal problem, the board assumes the responsibility to go back to the profile funds with the understanding they will eventually get away from that. She, personally as a board member, does accept that responsibility.

President Teichrow made a motion to temporarily reinstate the five profile funds for current profile fund participants only, and continue to pursue the Front/Balancer issue. Mr. Pierce seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye. Mr. Klawon had departed the meeting.

**Future Board Meetings** - Thursday: November 12 and December 9, 2004.

**Operational Summary Report** - The Executive Director presented an operational summary report for the months of June and July 2004, answering any questions Board members had.

**The following portion of the meeting relates to matters of individual privacy. President Teichrow determined that the demands of individual privacy clearly exceed the merits of public disclosure. As such, this portion of the meeting will be closed.**

**CLOSED MEETING**

**CONTESTED CASES**

**Patrick Hansen - Informal Reconsideration** – Mr. Hansen applied for a disability retirement on June 24, 2004. Based on the medical records and information received, his claim was denied at that time. Mr. Hansen appealed the Board’s decision and has provided additional information.

After a lengthy discussion, Mrs. Carey made a motion to approve a disability retirement with annual review. Mr. McGee seconded the motion. Mrs. Kasten stated she could not vote affirmative on the motion without knowing there was information in the file that more fully clarified and supported Mr. Hansen’s disability. Mrs. Carey rescinded her motion.



Mrs. Kasten made a motion to defer the Board's determination for further medical information. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

**Robert Barry - Informal Reconsideration** – Mr. Barry is appealing the previous Board decision to uphold the staff determination on the computation of his Highest Average Compensation (HAC).

Following considerable discussion, Mr. Pierce made a motion that the Board uphold their previous decision. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

**Kasey De La Hunt - Informal Reconsideration** – Mr. De La Hunt is asking consideration by the Board to accept his GABA election at this time.

Mrs. Kasten made a motion that the Board uphold the previous Board decision regarding the non-receipt of the GABA election, that GABA coverage for Kasey De La Hunt be denied. The motion failed for lack of a second.

President Teichrow made a motion to defer this issue of Kasey De La Hunt for additional information. Mr. Pierce seconded the motion, which upon being submitted to vote, was duly carried with the five attending members voting aye, and Mrs. Kasten voting nay.

**Ted Druschel - Informal Reconsideration** – President Teichrow made a motion to approve a disability retirement with annual review for Ted Druschel. Mrs. Carey seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

**William Burns – Final Administrative Decision** – Mr. Jenkins provided the Board with the Proposed Findings of Fact and Conclusions of Law in the matter of William Burns. Mrs. Kasten made a motion that the Board adopt the hearing examiner's Proposed Findings of Fact and Conclusions of Law (with Exhibits) as the Board's final administrative decision in this contested case, denying Mr. Burns' requested relief and upholding the staff determination of the benefit payment and adjustment for repayment. Mr. Pierce seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

## **MINUTES OF CLOSED MEETING**

The Executive Director presented the minutes of the closed meeting of July 22, 2004. Mr. McGee moved that the minutes of the previous closed meeting be approved. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

**RETIREMENT REPORT** - Ian Steel, Disability Claims Examiner

**Disability Claims** - The Disability Claims Examiner presented the disability claims for Board consideration.

Mr. Pierce made a motion for approval of the disability claims as recommended for Mary Pat Klein and Shirley Quick, with annual review; for Kevin Young, Perry Mock, Joel Overton, and Dana Ahmed, without annual review. Mrs. Carey seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

**Disability Reviews** - The Disability Claims Examiner presented the disability reviews to the Board.

After discussion of all the reviews, Mr. Pierce made a motion to approve the disability reviews as recommended: to continue disability retirement and discontinue annual review for Nancy Erickson, Kyle Hinzman, and Wendy Hoerner. Mrs. Carey seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

**Finalized Service/Disability Retirement Benefits, Monthly Survivorship/Death Benefits, and VFCA Lump Sum Death Benefit Payments** - Applications for service retirements/finalized disability benefits, applications for monthly survivorship-death benefits, and VFCA lump sum death benefit payments were presented to the Board. Mrs. Carey made a motion to approve the retirement benefits as presented. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

**Contested Case Report Update** - The Board Attorneys presented a contested matter status report update.

**ADJOURNMENT**

There being no further business to come before the Board at this date, Mrs. Kasten made a motion to adjourn the meeting. Mr. McGee seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye. The next meeting is tentatively scheduled for September 23, 2004, at 8:30 a.m. in Miles City.